

AO 245B Sheet 1 - Judgment in a Criminal Case - D. Massachusetts (03/02)

United States District Court

District of Massachusetts

UNITED STATES OF AMERICA
v.

JUAN CONCE
True Name: Juan Isidro Conce Polanco

AMENDED JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

Case Number: 1: 04 CR 10049 - 001 - WGY

Stephen Hrones
Defendant's Attorney

Review of Sentence on Remand (Fed. R. Crim. P. 35(a))

THE DEFENDANT:

pleaded guilty to count(s): 1,2 _____
 pleaded nolo contendere to counts(s) _____ which was accepted by the court.
 was found guilty on count(s) _____ after a plea of not guilty.

Accordingly, the court has adjudicated that the defendant is guilty of the following offense(s):

| <u>Title & Section</u> | <u>Nature of Offense</u> | <u>Date Offense Concluded</u> | <u>Count Number(s)</u> |
|----------------------------|---|-------------------------------|------------------------|
| 21 USC § 846 | Conspiracy to Possess with Intent to Distribute | 04/30/03 | 1 |
| 21 USC § 841(a)(1) | Possession with Intent to Distribute a Controlled Substance | 04/17/03 | 2 |
| 18 USC § 2 | Aiding & Abetting | | |

See continuation page

The defendant is sentenced as provided in pages 2 through ____ of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on counts(s) _____ and is discharged as to such count(s).

Count(s) _____ is dismissed on the motion of the United States.

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States Attorney of any material change in the defendant's economic circumstances.

02/23/06

Defendant's Soc. Sec. No.: xxx-xx-5758

Date of Imposition of Judgment

Defendant's Date of Birth: 77

Signature of Judicial Officer

Defendant's USM No.: 25117-038

Name and Title of Judicial Officer

Defendant's Residence Address:

Judge, U.S. District Court

Defendant's Mailing Address:

Date

February 24, 2006

AO 245B Sheet 2 - Imprisonment - D. Massachusetts (10/01)CASE NUMBER: 1: 04 CR 10049 - 001 - WGY
DEFENDANT:

Judgment - Page _____ of _____

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 262 month(s) on each count the sentence to run concurrent one count with the other.

- The court makes the following recommendations to the Bureau of Prisons:
custody at a facility in southern Florida. The Court recommends the defendant receive credit for time served from 2/24/04 to the present.
- The defendant is remanded to the custody of the United States Marshal.
- The defendant shall surrender to the United States Marshal for this district:
 at _____ on _____
 as notified by the United States Marshal.
- The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
 before _____ on _____
 as notified by the United States Marshal.
 as notified by the Probation or Pretrial Services Officer.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
Deputy U.S. Marshal

AO 245B_Sheet 3 - Supervised Release - D. Massachusetts (10/01)

CASE NUMBER: 1: 04 CR 10049 - 001 - WGY
DEFENDANT:

Judgment - Page of

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of

8 year(s)

 See continuation page

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state, or local crime.

The defendant shall not illegally possess a controlled substance.

For offenses committed on or after September 13, 1994:

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer.

The above drug testing condition is suspended based on the court's determination that the defendant poses a low risk of future substance abuse. (Check if applicable.)

The defendant shall not possess a firearm, destructive device, or any other dangerous weapon.

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). The defendant shall also comply with the additional conditions on the attached page (if indicated above).

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependants and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

Continuation Page - Supervised Release/ProbationCASE NUMBER: **1: 04 CR 10049 - 001 - WGY**
DEFENDANT:

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Continuation of Conditions of Supervised Release Probation

The defendant is to participate in a program for substance abuse as directed by Probation which program may include testing not to exceed 104 tests per year to determine whether the defendant has reverted to the use of alcohol or drugs. The defendant may be required to contribute to the cost of such program.

The defendant is to use his true name and is prohibited from the use of aliases, incorrect places of birth, false dates of birth, false social security numbers and any other pertinent identifying information.

If ordered deported the defendant is to leave the United States and not return without the prior permission of the Secretary of Homeland Security.

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DEFENDANT:

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth on Sheet 5, Part B.

| <u>Assessment</u> | <u>Fine</u> | <u>Restitution</u> |
|-------------------|-------------|--------------------|
| TOTALS | \$200.00 | |

The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

The defendant shall make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid in full prior to the United States receiving payment.

| <u>Name of Payee</u> | <u>*Total Amount of Loss</u> | <u>Amount of Restitution Ordered</u> | <u>Priority Order or Percentage of Payment</u> |
|----------------------|----------------------------------|--|--|
|----------------------|----------------------------------|--|--|

| | | | |
|---------------|---------------|---------------|--|
| TOTALS | <u>\$0.00</u> | <u>\$0.00</u> | |
|---------------|---------------|---------------|--|

See
Continuation
Page

If applicable, restitution amount ordered pursuant to plea agreement _____

The defendant shall pay interest on any fine or restitution of more than \$2,500, unless the fine or restitution is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 5, Part B may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest, and it is ordered that:

the interest requirement is waived for the fine and/or restitution.

the interest requirement for the fine and/or restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18, United States Code, for offenses committed on or after September 13, 1994 but before April 23, 1996.

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DEFENDANT:**SCHEDULE OF PAYMENTS**

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

- A Lump sum payment of \$200.00 due immediately, balance due
 not later than _____, or
 in accordance with C, D, or E below; or
- B Payment to begin immediately (may be combined with C, D, or E below); or
- C Payment in _____ (e.g., equal, weekly, monthly, quarterly) installments of _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D Payment in _____ (e.g., equal, weekly, monthly, quarterly) installments of _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise in the special instruction above, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court, unless otherwise directed by the court, the probation officer, or the United States attorney.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

 Joint and Several

Case Number, Defendant Name, and Joint and Several Amount:

 The defendant shall pay the cost of prosecution. See Continuation
Page The defendant shall pay the following court cost(s): The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) community restitution, (6) fine interest (7) penalties, and (8) costs, including cost of prosecution and court costs.

DEFENDANT: **JUAN CONCE**CASE NUMBER: **1: 04 CR 10049 - 001 - WGY**DISTRICT: **MASSACHUSETTS****STATEMENT OF REASONS****I COURT FINDINGS ON PRESENTENCE INVESTIGATION REPORT**A **The court adopts the presentence investigation report without change.**B **The court adopts the presentence investigation report with the following changes.**(Check all that apply and specify court determination, findings, or comments, referencing paragraph numbers in the presentence report, if applicable.)
(Use Section VIII if necessary.)1 **Chapter Two of the U.S.S.G. Manual determinations by court (including changes to base offense level, or specific offense characteristics):**2 **Chapter Three of the U.S.S.G. Manual determinations by court (including changes to victim-related adjustments, role in the offense, obstruction of justice, multiple counts, or acceptance of responsibility):**3 **Chapter Four of the U.S.S.G. Manual determinations by court (including changes to criminal history category or scores, career offender, or criminal livelihood determinations):**4 **Additional Comments or Findings** (including comments or factual findings concerning certain information in the presentence report that the Federal Bureau of Prisons may rely on when it makes inmate classification, designation, or programming decisions):C **The record establishes no need for a presentence investigation report pursuant to Fed.R.Crim.P. 32.****II COURT FINDING ON MANDATORY MINIMUM SENTENCE (Check all that apply.)**A No count of conviction carries a mandatory minimum sentence.B Mandatory minimum sentence imposed.C One or more counts of conviction alleged in the indictment carry a mandatory minimum term of imprisonment, but the sentence imposed is below a mandatory minimum term because the court has determined that the mandatory minimum does not apply based on

- findings of fact in this case
- substantial assistance (18 U.S.C. § 3553(e))
- the statutory safety valve (18 U.S.C. § 3553(f))

III COURT DETERMINATION OF ADVISORY GUIDELINE RANGE (BEFORE DEPARTURES):

Total Offense Level: 34

Criminal History Category: VI

Imprisonment Range: 262 to 327 months

Supervised Release Range: 8 to years

Fine Range: \$ 17,500 to \$ 8,000,000

 Fine waived or below the guideline range because of inability to pay.

DEFENDANT: **JUAN CONCE**
CASE NUMBER: **1: 04 CR 10049 - 001 - WGY**
DISTRICT: **MASSACHUSETTS**

STATEMENT OF REASONS

IV ADVISORY GUIDELINE SENTENCING DETERMINATION (Check only one.)

- A The sentence is within an advisory guideline range that is not greater than 24 months, and the court finds no reason to depart.
- B The sentence is within an advisory guideline range that is greater than 24 months, and the specific sentence is imposed for these reasons.
(Use Section VIII if necessary.)
low end of range is sufficient
- C The court departs from the advisory guideline range for reasons authorized by the sentencing guidelines manual.
(Also complete Section V.)
- D The court imposed a sentence outside the advisory sentencing guideline system. (Also complete Section VI.)

V DEPARTURES AUTHORIZED BY THE ADVISORY SENTENCING GUIDELINES (If applicable.)

A The sentence imposed departs (Check only one.):

- below the advisory guideline range
- above the advisory guideline range

B Departure based on (Check all that apply.):

- 1 **Plea Agreement** (Check all that apply and check reason(s) below.):
 - 5K1.1 plea agreement based on the defendant's substantial assistance
 - 5K3.1 plea agreement based on Early Disposition or "Fast-track" Program
 - binding plea agreement for departure accepted by the court
 - plea agreement for departure, which the court finds to be reasonable
 - plea agreement that states that the government will not oppose a defense departure motion.

- 2 **Motion Not Addressed in a Plea Agreement** (Check all that apply and check reason(s) below.):
 - 5K1.1 government motion based on the defendant's substantial assistance
 - 5K3.1 government motion based on Early Disposition or "Fast-track" program
 - government motion for departure
 - defense motion for departure to which the government did not object
 - defense motion for departure to which the government objected

- 3 **Other**

- Other than a plea agreement or motion by the parties for departure (Check reason(s) below.):

C Reason(s) for Departure (Check all that apply other than 5K1.1 or 5K3.1.):

- | | | |
|--|--|---|
| <input type="checkbox"/> 4A1.3 Criminal History Inadequacy | <input type="checkbox"/> 5K2.1 Death | <input type="checkbox"/> 5K2.11 Lesser Harm |
| <input type="checkbox"/> 5H1.1 Age | <input type="checkbox"/> 5K2.2 Physical Injury | <input type="checkbox"/> 5K2.12 Coercion and Duress |
| <input type="checkbox"/> 5H1.2 Education and Vocational Skills | <input type="checkbox"/> 5K2.3 Extreme Psychological Injury | <input type="checkbox"/> 5K2.13 Diminished Capacity |
| <input type="checkbox"/> 5H1.3 Mental and Emotional Condition | <input type="checkbox"/> 5K2.4 Abduction or Unlawful Restraint | <input type="checkbox"/> 5K2.14 Public Welfare |
| <input type="checkbox"/> 5H1.4 Physical Condition | <input type="checkbox"/> 5K2.5 Property Damage or Loss | <input type="checkbox"/> 5K2.16 Voluntary Disclosure of Offense |
| <input type="checkbox"/> 5H1.5 Employment Record | <input type="checkbox"/> 5K2.6 Weapon or Dangerous Weapon | <input type="checkbox"/> 5K2.17 High-Capacity, Semiautomatic Weapon |
| <input type="checkbox"/> 5H1.6 Family Ties and Responsibilities | <input type="checkbox"/> 5K2.7 Disruption of Government Function | <input type="checkbox"/> 5K2.18 Violent Street Gang |
| <input type="checkbox"/> 5H1.11 Military Record, Charitable Service, Good Works | <input type="checkbox"/> 5K2.8 Extreme Conduct | <input type="checkbox"/> 5K2.20 Aberrant Behavior |
| <input type="checkbox"/> 5K2.0 Aggravating or Mitigating Circumstances | <input type="checkbox"/> 5K2.9 Criminal Purpose | <input type="checkbox"/> 5K2.21 Dismissed and Uncharged Conduct |
| | <input type="checkbox"/> 5K2.10 Victim's Conduct | <input type="checkbox"/> 5K2.22 Age or Health of Sex Offenders |
| | | <input type="checkbox"/> 5K2.23 Discharged Terms of Imprisonment |
| | | <input type="checkbox"/> Other guideline basis (e.g., 2B1.1 commentary) |

D Explain the facts justifying the departure. (Use Section VIII if necessary.)

DEFENDANT: **JUAN CONCE**

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CASE NUMBER: **1: 04 CR 10049 - 001 - WGY**
DISTRICT: **MASSACHUSETTS****STATEMENT OF REASONS****VI COURT DETERMINATION FOR SENTENCE OUTSIDE THE ADVISORY GUIDELINE SYSTEM**

(Check all that apply.)

A The sentence imposed is (Check only one.):

- below the advisory guideline range
 above the advisory guideline range

B Sentence imposed pursuant to (Check all that apply.):1 **Plea Agreement** (Check all that apply and check reason(s) below.):

- binding plea agreement for a sentence outside the advisory guideline system accepted by the court
 plea agreement for a sentence outside the advisory guideline system, which the court finds to be reasonable
 plea agreement that states that the government will not oppose a defense motion to the court to sentence outside the advisory guideline system

2 **Motion Not Addressed in a Plea Agreement** (Check all that apply and check reason(s) below.):

- government motion for a sentence outside of the advisory guideline system
 defense motion for a sentence outside of the advisory guideline system to which the government did not object
 defense motion for a sentence outside of the advisory guideline system to which the government objected

3 **Other**

- Other than a plea agreement or motion by the parties for a sentence outside of the advisory guideline system (Check reason(s) below.):

C Reason(s) for Sentence Outside the Advisory Guideline System (Check all that apply.)

- the nature and circumstances of the offense and the history and characteristics of the defendant pursuant to 18 U.S.C. § 3553(a)(1)
 to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense (18 U.S.C. § 3553(a)(2)(A))
 to afford adequate deterrence to criminal conduct (18 U.S.C. § 3553(a)(2)(B))
 to protect the public from further crimes of the defendant (18 U.S.C. § 3553(a)(2)(C))
 to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner (18 U.S.C. § 3553(a)(2)(D))
 to avoid unwarranted sentencing disparities among defendants (18 U.S.C. § 3553(a)(6))
 to provide restitution to any victims of the offense (18 U.S.C. § 3553(a)(7))

D Explain the facts justifying a sentence outside the advisory guideline system. (Use Section VIII if necessary.)

DEFENDANT: **JUAN CONCE**
CASE NUMBER: **1: 04 CR 10049 - 001 - WGY**
DISTRICT: **MASSACHUSETTS**

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STATEMENT OF REASONS**VII COURT DETERMINATIONS OF RESTITUTION**

- A Restitution Not Applicable.
- B Total Amount of Restitution: _____
- C Restitution not ordered (Check only one.):
- 1 For offenses for which restitution is otherwise mandatory under 18 U.S.C. § 3663A, restitution is not ordered because the number of identifiable victims is so large as to make restitution impracticable under 18 U.S.C. § 3663A(c)(3)(A).
 - 2 For offenses for which restitution is otherwise mandatory under 18 U.S.C. § 3663A, restitution is not ordered because determining complex issues of fact and relating them to the cause or amount of the victims' losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim would be outweighed by the burden on the sentencing process under 18 U.S.C. § 3663A(c)(3)(B).
 - 3 For other offenses for which restitution is authorized under 18 U.S.C. § 3663 and/or required by the sentencing guidelines, restitution is not ordered because the complication and prolongation of the sentencing process resulting from the fashioning of a restitution order outweigh the need to provide restitution to any victims under 18 U.S.C. § 3663(a)(1)(B)(ii).
 - 4 Restitution is not ordered for other reasons. (Explain.)
- D Partial restitution is ordered for these reasons (18 U.S.C. § 3553(c)):

VIII ADDITIONAL FACTS JUSTIFYING THE SENTENCE IN THIS CASE (If applicable.)

Sections I, II, III, IV, and VII of the Statement of Reasons form must be completed in all felony cases.

Defendant's Soc. Sec. No.: 000-00-5759Date of Imposition of Judgment
02/23/06Defendant's Date of Birth: 77

Defendant's Residence Address:

Defendant's Mailing Address:

William J. Young
Signature of Judge
The Honorable William J. Young, Judge, U.S. District Court
Name and Title of Judge
Date Signed February 24, 2006

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Criminal No.
04-10049-WGY

UNITED STATES OF AMERICA

V.

SENTENCING EXCERPT

* * *

BEFORE: The Honorable William G. Young,
District Judge

1 Courthouse Way
Boston, Massachusetts

February 23, 2006

1 **THE COURT:** Mr. Juan Conce, in consideration of the
2 factors under which the Court must sentence pursuant to 18
3 United States Code, Section 3553, the information from the
4 United States Attorney, your attorney, the probation officer
5 and yourself, this Court does reimpose the same sentence
6 I've already imposed, 262 months, with the other conditions.
7 You, naturally, will have credit toward any portion of that
8 sentence that you have served in custody.

9 Let me explain the sentence in light of your
10 counsel's careful briefing and excellent argument.

11 This Court independently, recognizing the advisory
12 nature of the guidelines, considers the 262 month sentence a
13 just and a fair sentence. I arrive at that conclusion
14 largely adopting, or I think entirely adopting the argument
15 made by the United States Attorney. The strong advice of
16 congress, it's only advice, but the strong advice of
17 congress when dealing with a career offender is that the
18 sentence be this severe sentence.

19 Now it's necessary to say a word, because your
20 counsel properly raises the question about whether
21 Almendarez-Torres, a Supreme Court case, will remain good
22 law. I --

23 **MR. HRONES:** May we sit down, your Honor?

24 **THE COURT:** Of course you may.

25 I have no hesitancy in saying that Mr. Hrones'

1 lineup of the justices and his consequent prediction as to
2 the future is one that I share and look forward to the day
3 when the guidelines in fact will be Blakelyized. It is for
4 that reason that this Court is now putting before juries
5 everything factual that ought go before juries.

6 My own analysis, for which I take responsibility,
7 is that Almendarez-Torres is good law. The prior
8 convictions were counseled, he had a chance to his jury on
9 those prior convictions, and it is within the routine
10 concepts of due process at law that I can take judicial
11 notice of those judicial proceedings. That's far different
12 than an issue of drug quantity, organizer or manager or the
13 like.

14 So while I share his predictions and his view of
15 the lineup of the justices, I certainly hope he's right, I
16 don't think Almendarez-Torres ultimately will fall, nor, my
17 own understanding of constitutional law, does it lead me to
18 believe that it ought fall. Nevertheless, Mr. Hrones has
19 ably preserved the point and now if there are further
20 proceedings, that's the reason I explained what I explained.

21 Now, Mr. Conce, you now have the right to appeal
22 from this sentence. Should you appeal and if your appeal is
23 successful in whole or in part, the case will be remanded
24 for resentencing before another judge unless I am directed
25 to discharge the judicial function in that regard. Of

1 course I'll obey that. But my general practice will follow.

2 That's the sentence of the Court. He's remanded to
3 the custody of the marshals. We'll recess.

4 (Whereupon the Court and the Clerk conferred.)

5 **THE COURT:** I reimpose the same sentence without
6 going through the other aspects of it. It's exactly the
7 same sentence. We'll recess.

8 **THE CLERK:** All rise. Court is in recess.

9 (Whereupon the matter concluded.)

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